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CURTIS HILL

**\*E-FILED ON 9/20/05\***

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PAUL CASAREZ,  
Plaintiffs,

vs.

COUNTY OF SAN BENITO AND  
SHERIFF CURTIS HILL,  
Defendants.

Case No. C04-03658 HRL

**STIPULATION AND ORDER REGARDING  
CONTINUANCE OF TRIAL**

**Current Trial Date: October 11, 2005**  
**Magistrate Judge Howard R. Lloyd**

THE PARTIES HEREBY STIPULATE, THROUGH THEIR ATTORNEYS OF RECORD,  
TO THE FOLLOWING:

1. This case involves claims by a right-foot amputee, Plaintiff PAUL CASAREZ, related to his incarceration at the San Benito County Jail at various brief times in 2002 and 2003. Trial is currently set in this matter for October 11, 2005. This is the first trial-setting. The Final Pretrial Conference is scheduled for October 4, 2005, at 1:30 p.m. The parties mediated, unsuccessfully, on May 31, 2005 with Fred D. Butler, Esq.

2. Plaintiff's initial Complaint was filed August 27, 2004, and contained three causes of action: 1) Eighth Amendment violation under 42 U.S.C. §1983, 2) Violation of the Americans with Disabilities Act, and 3) Violation of California's Unruh Civil Rights Act. The First and Third Claims sought compensatory damages, and the Second Claim sought injunctive relief. On August 2, 2005, Defendants moved for summary judgment as to the First and Third Claims.

1           3.       On August 23, 2005, the parties submitted for court approval a stipulation that the  
2 First and Third Claims be dismissed, and that Plaintiff be permitted to file an attached First-  
3 Amended Complaint which (a) realleged the previously denominated Second Claim for  
4 Injunctive relief under the ADA, and added new allegations also seeking compensatory  
5 damages thereunder, and (b) alleged a new state law claim for dangerous condition of public  
6 property (Government Code §835, et. seq.). The Court signed the Stipulation and Order on  
7 August 24, 2005. The First-Amended Complaint was filed and Defendants answered it on  
8 September 1, 2005.

9           4.       Following an ensuing informal exchange of information and documents relating to  
10 the new allegations, both sides now agree that it would be fair and appropriate, as well as  
11 conducive to judicial economy, to continue the trial date from October 11, 2005 to  
12 approximately February 2006, in order to permit the parties to complete their limited and  
13 focused discovery on the new allegations, and to give Defendants the opportunity to test the  
14 new allegations through a further motion for summary judgment filed within the next sixty days.  
15 In particular, there are or may be issues as to whether Plaintiff can meet the deliberate  
16 indifference standard for the award of damages under the Americans with Disabilities Act.  
17 (Duvall v. County of Kitsap, 260 F.3d 1124, 1138 (9<sup>th</sup> Cir. 2001), and as to whether Plaintiff  
18 can show that Sheriff Hill had the requisite actual or constructive notice of the condition which  
19 Plaintiff alleges to be dangerous. (Government Code §§840.2, 840.4).

20           5.       A short continuance of the trial date will have the important addition benefit of  
21 giving the parties a further window in which to seek settlement of this matter before incurring  
22 the considerable expense of pretrial preparation and expert discovery which will otherwise be  
23 imminent, and which, if incurred, would impede the prospects of settlement. It should be  
24 noted that the parties have a settlement conference with Magistrate Seeborg calendared for  
25 September 27, 2005, by which time significant expenses will have been incurred for trial  
26 preparation and expert depositions if the trial date is not continued.

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6. Based on the foregoing, the parties stipulate and request that the trial and pretrial conference dates be continued until approximately February 2006, or to a time convenient to the Court.

Dated: September 16, 2005

LAW OFFICES OF MICHAEL E. ADAMS

By: /s/ Michael E. Adams  
MICHAEL E. ADAMS  
Attorney for Plaintiff

Dated: September 16, 2005

RANKIN, LANDSNESS, LAHDE,  
SERVERIAN & STOCK

By: /s/ Jon A. Heaberlin  
JON A. HEABERLIN  
Attorneys for Defendants

**ORDER**

THE PARTIES HAVING STIPULATED, AND GOOD CAUSE APPEARING, IT IS  
HEREBY ORDERED:

1. Trial in this matter shall be continued until February 20, 2006.
  2. The pretrial conference shall be continued to February 14, 2006, 1:30 p.m.
  3. The last hearing date for dispositive motions is December 6, 2005, 10:00 a.m.
  4. The parties shall meet, confer, and stipulate amongst themselves on other issues and deadlines not ordered here, such as those relating to discovery and expert disclosure.
- All such dates shall conform with the dates set forth above.**

DATED: September 20, 2005

/s/ electronic signature authorized  
MAGISTRATE JUDGE HOWARD R. LLOYD